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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

1998 Biennial Review - Review of
International Common Carrier Regulations

IB Docket 98-118

**REPLY COMMENTS OF THE PERSONAL COMMUNICATIONS INDUSTRY
ASSOCIATION**

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The Personal Communications Industry Association ("PCIA") hereby submits its reply to the comments received in the above-referenced docket.¹

I. Introduction and Summary

The record firmly establishes that, pursuant to Section 10 of the Communications Act of 1934 ("Act"), as amended, forbearance from Section 214 requirements is warranted for Commercial Mobile Radio Services ("CMRS") operators providing international services on unaffiliated routes. PCIA, therefore, urges the Commission to forbear from Section 214 requirements for these providers.

In the alternative, PCIA urges the Commission to adopt a Section 214 blanket authorization for CMRS providers under its Section 11 authority. While PCIA supports the

¹ 1998 Regulatory Review - Review of International Common Carrier Regulations, IB 98-118, ¶ 7 (July 14, 1998) ("NPRM").

inclusion of CMRS operators affiliated with foreign carriers that lack market power in a blanket authorization, PCIA opposes AT&T's request to deny a blanket authorization to foreign affiliates that have equity interests in or by the applicant of 10 percent or more.

II. There Is Tremendous Support In The Record For Forbearance From Section 214 Requirements For CMRS Providers.

There is substantial support in the opening comments for forbearance from Section 214 requirements for all CMRS providers.² Most parties commenting upon this forbearance issue agree that the Commission is compelled under Section 10 of the Act³ to forbear from international Section 214 requirements for CMRS operators because the competitive conditions in the marketplace are sufficient to ensure that rates and practices are just, reasonable, and not unreasonably discriminatory and that consumer interests are protected. SBC states, “[c]ompetition exists in the international services marketplace and will increase as a result of the recent WTO Agreement. Thus, competitive market conditions will effectively regulate rates.”⁴ Iridium similarly observes that “. . . Section 214 is unnecessary in a competitive marketplace to prevent unreasonable charges and practices or to protect consumers from monopoly service providers.”⁵ In its comments, GTE points out that “[t]he Commission has already determined

² See Comments of SBC at 7; Comments of Iridium at 3; Comments of PCIA at 2; and Comments of GTE at 4. Seven parties addressed forbearance: SBC, PCIA, Iridium, GTE, WorldCom, Primus and the Federal Bureau of Investigation (“FBI”). The majority supported forbearance for all CMRS providers. PCIA supports this proposal. At a minimum, however, forbearance is warranted for CMRS operators providing international services to unaffiliated points and CMRS providers reselling the long distance services of unaffiliated U.S. carriers to affiliated markets.

³ 47 U.S.C. § 160.

⁴ Comments of SBC at 7.

⁵ Comments of Iridium at 3.

that it is the competitive CMRS market which assures reasonable rates and practices.”⁶ The record is clear. Competition in the CMRS international marketplace is an effective watchman, thereby alleviating the need for continued regulatory oversight under Section 214.

In addition, commenters agree that forbearance will further the public interest by reducing administrative burdens and eliminating market delays,⁷ thus “promot[ing] competition amongst providers of telecommunications services.”⁸ Commenters also agree that parties suspecting anticompetitive behavior by CMRS carriers — a result highly unlikely because these providers are new entrants devoid of market share — can avail themselves of the Section 208 process whereby the Commission can address any competitive concerns.⁹

WorldCom, Primus and the FBI oppose forbearance. These parties contend that the Commission needs a mechanism in place to condition or revoke authorizations to address competitive concerns.¹⁰ As PCIA stated in its comments, the Commission should look to performance measurement and vigorous enforcement as a means to protect the public interest.¹¹ The Commission can address anticompetitive concerns on a case by case basis pursuant to complaints filed under Section 208.¹² Moreover, to the extent the activities of CMRS operators

⁶ Comments of GTE at 4.

⁷ See Comments of PCIA at 8; Comments of SBC at 8; Comments of GTE at 4.

⁸ 47 U.S.C. § 160(b).

⁹ Comments of Iridium at 4; Comments of PCIA at 9.

¹⁰ See Comments of WorldCom at 1; Comments of FBI at 9; Comments of Primus at 2.

¹¹ Comments of PCIA at 9-10 (quoting Commissioner Michael K. Powell).

¹² 47 U.S.C. § 208.

in providing international services raise any anticompetitive concerns in the future, the Commission could always reimpose Section 214 requirements.

The opposing comments obviously failed to assess the competitive marketplace for CMRS or consider the other regulatory mechanisms available to address public interest concerns, should any arise. The reality is that meaningful competition exists in the international marketplace, which will thwart any potential anticompetitive behavior by CMRS providers. As PCIA demonstrated in its comments, continued imposition of Section 214 requirements for CMRS operators providing international services serves no purpose.¹³ Instead, it hampers competition and imposes unnecessary regulatory burdens on these carriers and Commission staff.

Congress, pursuant to Section 10 of the Act, directed the Commission to forbear from applying any provision of the Act, including Section 214, if the three-prong test of Section 10(a) is met.¹⁴ The record clearly demonstrates that each prong of the test is satisfied. Thus, PCIA urges the Commission to forbear promptly so that CMRS providers immediately may enter international markets and begin providing new and innovative services to consumers.

III. If Forbearance Is Denied, Most Parties Support The Adoption Of A Blanket Section 214 Authorization For All CMRS Operators Providing International Services.

If the Commission denies forbearance, it should adopt a blanket Section 214 authorization for CMRS providers. Most parties filing comments in this proceeding support, at a minimum, the implementation of a blanket Section 214 authorization process. The FBI, however, opposed this deregulatory measure; PCIA addresses its concerns below.

¹³ Comments of PCIA at 10.

¹⁴ 47 U.S.C. § 160(a).

A. Contrary to the FBI's claims, the Commission has full authority under Section 11 of the Communications Act to eliminate or modify regulations issued pursuant to Section 214 and it is in the public interest to do so.

The FBI contends that the adoption of a blanket Section 214 authorization for any class of carriers “is contrary to law” and would override national security and law enforcement concerns.¹⁵ Nothing could be further from the truth. Congress, pursuant to Section 11 of the Communications Act, as amended, directed the FCC to “review all regulations issued under th[e] Act” and to determine “whether any such regulation is no longer in the public interest as the result of meaningful economic competition between providers of such service.”¹⁶ If the Commission determines, after its review, that any regulation is not necessary in the public interest, Section 11(b) requires the FCC to repeal or modify the regulation.¹⁷ Section 214 and its implementing regulations are not in any way excluded from the Section 11 mandate.

Section 214 prohibits carriers from constructing new or extended lines and from providing service over those lines to international points “unless and until there shall first have been obtained from the Commission a certificate that the present and future public convenience and necessity require or will require the construction, or operation, or construction and operation of such additional or extended line.”¹⁸ The FBI argues that “the Commission’s review and certification [is] an absolute *condition precedent* to any construction, acquisition, operation, or use (for the purposes of transmission) of a line”¹⁹ and, as a result, a blanket authorization is

¹⁵ Comments of FBI at 2-4.

¹⁶ 47 U.S.C. § 161(a).

¹⁷ *Id.* § 161(b).

¹⁸ *Id.* § 214(a).

¹⁹ Comments of FBI at 4

“contrary to law.”²⁰ The FBI’s argument fails, however, because a blanket authorization meets the Section 214 statutory requirement.

As the Commission stated in the NPRM, “[t]he blanket authorization would certify that *it would serve the public interest, convenience, and necessity* to allow any entity that would be a non-dominant carrier to provide facilities-based service, or to resell the international services of other carriers, to any international point except a market in which an affiliated carrier operates.”²¹ If the Commission elects to adopt its proposal, the decision in this proceeding would constitute the public interest, convenience, and necessity finding and would grant the blanket authorization to eligible facilities-based carriers and resellers. Only after grant of the blanket authorization can eligible carriers and resellers operate under that authorization on eligible international routes. As stated in the NPRM, the Commission’s proposed rule, Section 63.25, would implement the blanket authorization.²² Grant of a blanket authorization is simply not contrary to law.

Moreover, the Commission’s proposed rules would provide substantial protection for the FBI’s national security and law enforcement concerns. For example, proposed Section 63.18(e) requires facilities-based carriers and resellers applying for global authority to “[l]ist any countries for which the applicant does not request authorization” and to certify that it will comply with the terms of Section 63.22, in the case of facilities-based carriers, and Section 63.23, in the case of resellers.²³ Proposed Sections 63.22 and 63.23 include several limitations on a carrier’s or

²⁰ *Id.*

²¹ NPRM ¶ 8 (emphasis added).

²² *Id.*

²³ *Id.* at A-6 (proposed Sections 63.18(e)(1) & (2)).

reseller's ability to provide international service. For example, carriers are prohibited from using licensed U.S. common carrier and non-common carrier facilities or non-U.S.-licensed facilities that appear on an exclusion list published by the Commission.²⁴ Similarly, carriers are prohibited from providing "service to any country listed on an exclusion list published by the Commission unless it has received specific authority under § 63.18(e)(4)."²⁵ Proposed Section 63.23 includes similar protections with respect to resale-based international common carriers.²⁶

In addition, as PCIA demonstrated in its initial comments, the Commission has already determined that meaningful competition exists in the CMRS marketplace.²⁷ Indeed, the Commission has acknowledged that the CMRS marketplace is more robust than other telecommunications markets.²⁸ In the NPRM, the Commission acknowledges that there are few if any grounds that would warrant denial or conditioning of an authorization for non-dominant carriers, which includes CMRS providers.²⁹ The record overwhelmingly supports this conclusion.

Commenters agree that the existing Section 214 application requirements do not serve the public interest, but instead delay market entry *at least* 35 days (and usually longer) and impose

²⁴ *Id.* at A-9 to A-10 (proposed Section 63.22(b)).

²⁵ *Id.* at A-10 (proposed Section 63.22(c)).

²⁶ *Id.* at A-11 (proposed Section 63.23).

²⁷ *See* Comments of PCIA at 5.

²⁸ *Personal Communications Industry Association's Broadband Personal Communications Services Alliance's Petition for Forbearance for Broadband Communications Services*, FCC 98-134, ¶¶ 8, 51 (July 2, 1998).

²⁹ NPRM ¶ 7.

unnecessary, administrative burdens on carriers and Commission staff.³⁰ The purpose of the agency's existing application requirements is to allow the agency to address any competitive concerns raised by an applicant prior to market entry. As the Commission concludes and the record supports, the great majority of applications — even those involving affiliations with foreign carriers lacking market power — do not raise competitive concerns warranting denial or conditioning.³¹ The FBI does not contradict this fact.

Further, as the record supports, CMRS providers, in particular, lack the incentive or ability to act anticompetitively because, for the most part, they provide international services as resellers.³² Retention of the existing application requirements for non-dominant carriers, particularly CMRS providers, is no longer necessary to serve the public interest. Accordingly, the Commission is *obligated*, pursuant to Section 11(b), to eliminate these unnecessary, individual Section 214 application requirements for CMRS providers.

B. Contrary to the FBI's claims, the Commission's proposed blanket authorization does not deny the Executive Branch Agencies their right "to be heard."

The FBI also contends that removal of the existing Section 214 application process denies the Executive Branch agencies the opportunity to be heard regarding potential concerns raised by a particular applicant.³³ The Commission's proposed blanket grant, however, does not preclude

³⁰ See Comments of SBC at 3, 4; Comments of Bell Atlantic at 1; Comments of PCIA at 8; Comments of Excel at 1; Comments of Ameritech at 3.

³¹ NPRM ¶ 7; see Comments of SBC at 5; Comments of Comptel at 3; Comments of Cable & Wireless at 4; Comments of Primus at 2; Comments of Iridium at 3.

³² See Comments of Iridium at 3; Comments of SBC at 8; Comments of PCIA at 10-13.

³³ Comments of FBI at 4.

its sister agencies from addressing any national security or law enforcement issues with the agency. The Executive Branch agencies can address such concerns pursuant to the blanket authorization rules proposed under new Section 63.25, which requires a non-dominant common carrier to notify the Commission within 30 days of commencing service that it has commenced providing service.³⁴ In the NPRM, the Commission explicitly states that it “may also need to review (in consultation with Executive Branch agencies) any given carrier’s authorization for national security, law enforcement, foreign policy and trade concerns.”³⁵ Thus, the Commission clearly intends to keep the Executive agencies apprised of carriers operating under blanket authorization and will consult with its sister agencies regarding potential concerns.

The bottom line is CMRS providers do not raise anticompetitive concerns. Accordingly, it would not serve the public interest to continue to impose existing Section 214 regulatory requirements on these carriers, particularly because any potential concerns clearly could be addressed pursuant to the commencement-of-service reporting requirements. Most parties in this proceeding agree overwhelmingly with the agency that the adoption of a blanket authorization is warranted for non-dominant carriers, particularly CMRS providers. While forbearance is most appropriate for CMRS providers, in the event it is denied, the Commission clearly should adopt a blanket authorization for these carriers.

³⁴ NPRM at A-13 (proposed Section 63.25(c)).

³⁵ *Id.* ¶ 10.

C. If the Commission adopts its blanket authorization proposal, it should not limit the application of the grant in the manner described by AT&T.

The majority of parties submitting comments in this proceeding support expansion of the blanket grant to affiliated routes where the foreign affiliate lacks market power.³⁶ PCIA urges forbearance for all CMRS providers serving unaffiliated routes and reselling the long distance services of unaffiliated U.S. carriers to affiliated markets. Nonetheless, if forbearance is denied, PCIA supports expansion of the blanket grant to affiliated routes where the foreign affiliate lacks market power because such affiliations rarely raise anticompetitive concerns warranting individual application review.

AT&T requests that the Commission not extend the blanket grant to affiliated carriers if the foreign affiliates have not been found to lack market power and have equity interests in or by the applicant of 10 percent and above.³⁷ The Commission should reject AT&T's arguments for two reasons. First, the Commission already resolved this issue in the *Foreign Participation Order*,³⁸ wherein it concluded that foreign investments below 25 percent rarely raise anticompetitive concerns.³⁹ AT&T did not challenge the adoption of the 25 percent threshold in that proceeding and, therefore, should not be allowed to do it here.

³⁶ See Comments of Bell Atlantic at 2; Comments of Qwest at 3; Comments of Comptel at 3; Comments of Cable & Wireless at 4; Comments of SBC at 4; Comments of Primus at 2; Comments of GTE at 2; and Comments of Iridium at 2-3.

³⁷ Comments of AT&T at 2.

³⁸ *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, 12 FCC Rcd 23891 (1997) ("*Foreign Participation Order*").

³⁹ *Id.* at 24035-36.

Second, any potential anticompetitive concerns that arise can be addressed pursuant to the proposed commencement-of-service reporting requirements. Equity arrangements between 10 and 25 percent rarely raise competitive concerns, as determined by the Commission.⁴⁰ Likewise, investments above 25 percent with foreign carriers lacking market power rarely raise competitive concerns because the foreign affiliate is not in a position on the foreign end to affect competition adversely in the U.S. market.⁴¹ Continued imposition of individual Section 214 application requirements on these carriers would disserve the public interest by delaying market entry and competition in the international marketplace. Accordingly, PCIA urges the Commission to dismiss AT&T's arguments and to extend its blanket grant to affiliated routes as described above in the event forbearance is denied.

IV. Conclusion

For the foregoing reasons, PCIA urges the Commission to forbear, pursuant to Section 10 of the Act, from Section 214 requirements for all CMRS operators providing international services to unaffiliated points and reselling the long distance services of unaffiliated U.S. carriers to affiliated markets. If forbearance is denied, PCIA requests, in the alternative, that the agency adopt a blanket Section 214 authorization for all CMRS providers serving unaffiliated points and affiliated markets where the affiliate lacks market power.

⁴⁰ *Id.*

⁴¹ *Id.* at 23960.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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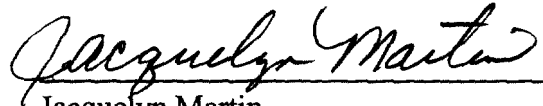
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